IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Mark Anthony Howard

Confirmation No.:   3390

Serial No.:   10/735,962   Examiner: Susan F. Rayyan

Filed: December 15, 2003   Group Art Unit: 2167

For: MULTI-TIERED STRUCTURE FOR FILE SHARING BASED ON
SOCIAL ROLES

Date: April 8, 2008

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Applicant requests review of the final rejection dated January 9, 2008, in the above-identified application. No amendments are being filed with this request.

This request is being filed with a Notice of Appeal.

This review is requested for the reason(s) stated on the attached sheet(s). Note: no more than five (5) pages may be provided.
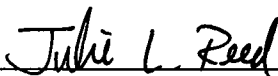
I am the:

☐   applicant/inventor
☐   assignee of record of the entire interest
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed)
☒   attorney or agent of record
☐   attorney or agent acting under 37 CFR 1.34

Total of 2 forms are submitted.

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Respectfully submitted,

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ARGUMENTS IN SUPPORT OF PRE-APPEAL BRIEF CONFERENCE

I.   This combination of references (Adams, Hanson and Dobbins), referred to from here on as AHD, does not teach several aspects of the claims.

1.   AHD does not teach transmitting a client-side application to a file-sharing user having a shared title.

The Office Action stated, "Hanson does teach transmitting a client-side application to a file-sharing user having a share file … (paragraph 47, paragraph 65, lines 1-5)."

Paragraph 65, lines 1-5 of Hanson states, "A selling side *user interface (UI) module 250* provides a user interface which allows the user to become a provider by registering content on the DMCHP 200 and setting prices, reviewing purchase history, and reconciling accounts, for example."

The user interface module 250 is part of the DMCHP 200. Paragraph 46 states, "As shown in FIG. 2, DMCHP 200 is *comprised of these modules.*" The paragraph goes on to say that while the DMCHP is shown as a single entity in Figure 2, it may be distributed "over a number of *servers* or may be available from one or more redundant *servers.*" DMCHP resides on the server-side, not the client side.

Therefore, even if it would be obvious to combine the teachings of Adams and Hanson, the combination of references would not teach or suggest *transmitting a client-side application to a file-sharing user having a shared title...* Dobbins does not address this point, being relied upon instead for allocation of bandwidth.

    2.   *The AHD combination does not teach allocated bandwidth based upon the user's role.*

As stated in the Office Action, the combination of Adams and Hanson does not teach *bandwidth being allocated to the file-sharing user at a first level...allocated to the querying user at a second level lower than a first level.* The Office Action states, "Dobbins does teach bandwidth being allocated to the file-sharing user at a first level (paragraph 111, lines 1-8, as the subscriber chooses a music selection and interactively selects a download selection)... the bandwidth is allocated to the querying user at a second level lower than a first level (paragraph 111, lines 25-28)..."

First, there is no "file-sharing" user in Dobbins. The Applicant is confused by the reference to the user choosing "a music selection and interactively selects a download selection..." The implication appears to be that the user's interactive *download* selection makes the user a 'file-sharing' user. If that were true, there would be no difference between a 'file-

sharing' user and a "querying user." Claim 1 explicitly requires that the file-sharing user have *a shared title*.

Paragraph 111, lines 1-8 from Dobbins states, "The client node 120 runs a client application allowing *the subscriber to chose a music selection for download from the server node 1110*. This application can be a properly equipped web browser, media player, or another client application that is open to carrying content from multiple providers or dedicated to bringing service only from that online music service. The subscriber at client node 1120 interactively selects a music download selection and the server node 1110 readies the music download for preferred transport by conforming to the agreed application signature and inserting a content tag."

There is no indication in this text that there are any users in the system that are not querying users. The 'preferred transport' apparently relied upon to teach a different level or class of user, is merely the description used to refer to the switch through which the downloaded file travels, Paragraph 0107.

Further, allowing users to purchase more bandwidth is not equivalent to allocating bandwidth to users based upon their role. Regardless of how much bandwidth a user purchases, the allocation is not based upon the user being a file-sharing user, as is what is required in claim 1, *bandwidth is allocated to the querying user at a second level lower than a first level.*

3. *The AHD combination does not teach a client side application for generating metadata.*

The Office Action states that Hanson teaches this in paragraph 47. However, Hanson, paragraph 47 states, "The metadata repository 210 contains metadata associated with all content which can be distributed through the DMCHP network. Attributes which may be contained in

the metadata repository 210 include..." There is no indication from where the metadata comes, nor that there is any generation of the metadata by any clients.

As stated above with regard to the client-side applications stated to be in the combination, there is no such client-side application, much less *the client-side application for generating metadata corresponding to the shared file...*

II.   *The deficiencies of the AHD combination affect all further rejections.*

For example, claim 19 requires *higher levels of network resources are allocated to the sharing class than allocated to the searching class.* For the reasons as discussed above with regard to claim 1 and the lack of a teaching of bandwidth allocation based upon a role, the AHD combination of references does not teach or suggest all of the elements of claim 19.

In another example, Claims 2 and 9-11 were rejected under 35 USC 103(a) as being unpatentable over AHD and further in view of Barker (US Publication No. 2002/0143976). The addition of Barker to the combination does not overcome the failure of the combination of AHD in rendering obvious claim 1. Barker is directed to updating and managing metadata, which would presume that metadata is even being used in the system as required by claim 1. As discussed above, the AHD combination does not teach client side generation of metadata, much less managing and updating it.

Claim 8 was rejected under the AHD combination plus Seed. The addition of Seed to the AHD combination does not overcome the failure of the previous combination to teach or suggest all of the limitations of claim 1, as discussed in detail above, and claim 8 depends from claim 1. Seed is directed to object replication and delivery. It does not address the deficiencies with regard to client-side applications, generation of metadata or the allocation of bandwidth according to user roles of the AHD combination.

Claim 12 was rejected under 35 USC 103(a) as being unpatentable over AHD, and further in view of US Patent Application Publication Number 2003/0217152, Kasper.

The addition of Kasper to the combination does not overcome the failure of the AHD combination to teach or suggest all of the limitations of claim 1, as discussed in detail above. Kasper is directed to synchronization of databases, no subject matter to overcome the deficiencies of the AHD combination set out above.

Claims 15-18 were rejected under 35 USC 103(a) as unpatentable over Adams, Hanson, Seed, Kasper and Dobbins.

As discussed in detail above, the AHD combination of references at the very least does not teach *receiving metadata from a plurality of file sharing users* (Hanson does not receive metadata), *bandwidth is allocated to the file-sharing users at a first level...bandwidth is allocated to querying users at a second level...* Further, the addition of Seed, Kasper and Dobbins does nothing to cure the deficiencies of the AHD combination set out above.

It is therefore submitted that all of the claims are patentably distinguishable over the prior art and allowance of these claims is requested. The Applicant also asserts all arguments made previously, whether or not explicitly discussed herein, to preserve the right to assert these arguments in the Appeal Brief.

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